

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: **AIRPORT**

DATE: October 31, 2006

Committee Members Present:

Supervisors Tessier
Stec
O'Connor
Girard

Committee Members Absent:

Supervisors Haskell
Mason

Vacant: Town of Queensbury

Others Present:

Marshall Stevens, Airport Manager
William Lamy, DPW Superintendent
Kim Lussier, Empire East Aviation
Wayne Judge, Attorney for Empire East Aviation
William H. Thomas, Chairman
Paul Dusek, County Attorney
Joan Sady, Clerk of the Board
Supervisor Geraghty
Don Hess, Town of Queensbury
John Alexander, Town of Warrensburg
Debra L. Schreiber, Legislative Office Specialist

Mr. Tessier called the meeting to order at 9:35 a.m.

Privilege of the floor was extended to Marshall Stevens, Airport Manager, who distributed copies of his agenda to the committee members, and a copy of same is on file with the minutes.

With respect to Item 1 on the agenda, Mr. Stevens said they had commenced discussions about possible rent structures on the new maintenance hangar that they anticipated turning over to Empire East Aviation. Depending on the weather, he stated, he expected the sewer project to be completed and the conversion from the old system to the new system would occur either by the end of this week or beginning of next week.

Since the last meeting, Mr. Stevens said he comprised a financial summary from information supplied by Empire East Aviation. In an effort to assist the members of the committee in attempting to arrive at a rental fee, Mr. Stevens briefly reviewed the compilation, noting the first page entitled Empire East Aviation, Inc. Gross Profits, were the revenues and expenses relating to maintenance on a monthly and annual basis.

Mr. W. Thomas entered the meeting at 9:37 a.m.

Mr. Stevens apprised the original lease structure gave the County 3% of all gross revenue Empire East Aviation received. While that lease agreement had been revised, he noted, he focused on gross profits rather than gross revenues when compiling that summary. In response to a question by Mr. O'Connor, Mr. Stevens indicated any profits by the FBO were derived from a mark-up in the parts and oil, as well as labor costs. He noted their overall net income had steadily increased from 2004 to present.

Mr. Stevens indicated the second and third pages were Pro Forma Income Estimates commencing with the information on the first page and moving forward. He said page 2 listed the various assumptions based upon 2006 dollars, while page 3 was the income estimates itemizing the three categories of maintenance (annual inspections, insurance jobs and "other" work). Mr. Stevens said

he thought the estimates were conservative and, therefore, anticipated double digit increases in the gross profits.

Mr. Stevens said page 4 listed the increase in yearly rent the County would receive from the FBO based either on a fixed rental basis or a percentage of gross profits. Mr. Stevens apprised he had a discussion with Frank O'Keefe, County Treasurer, who indicated a decision had been made that the \$1 million project would be banned for five years and the County contribution would be \$200,000 per year plus the \$40,000 interest payment.

Mr. Stevens mentioned some of the other factors the committee might like to consider in determining the rental fee:

- the County received an annual revenue guarantee of \$25,000 per year in the lease agreement with Empire East Aviation. He noted the past couple years, it was closer to \$30,000 based upon the percentage of revenue received;
- the FBO would continue to be responsible for utilities;
- the current building did not include an air compressor, which they had requested.

Mr. Girard inquired about the status of the County investment and Mr. Tessier commented he was unsure why the Treasurer would ban the project for five years, as a project of this size was usually bonded. He suggested researching other options to reduce the principal and interest payment on the project lower than \$240,000/year for five years. Mr. Stevens stated originally the plan was to offset the cost utilizing tobacco settlement funds, but that was not possible due to the project being revenue-generated.

Mr. Hess entered the meeting at 9:50 a.m.

Mr. Tessier added Mr. Lussier must decide how much he could increase the shop business. Kim Lussier, President of Empire East Aviation, stated he compiled his information based upon an increase in t-hangars along the north end and so far that had not materialized. He said he thought it would be a graduated process, working with what they had and moving forward. He said if he continued to work his plan through to locate financing for the hangars on the north end, he would see an increase in fuel sales. Mr. Girard inquired about the current lease agreement and Mr. Stevens replied the lease provided Empire East Aviation with the shop, blue building, main hangar, all 18 t-hangars, office space and fuel. In return, he said Warren County received \$500/base rent; five cents per gallon on fuel sales; 3% of all revenues with the exception of the six newer t-hangars (50%) and nothing on flight training, charter or aircraft maintenance. The entire lease arrangement provides Warren County with an annual guarantee of \$25,000, stated Mr. Stevens. The one maintenance hangar required the mechanics to constantly move aircraft in and out of the hangar when performing repairs depending upon the availability of parts, noted Mr. Lussier; however, he said, he anticipated the new hangar to hold up to five aircraft at a time. Mr. Stevens added he only included billable revenue in the compilation and nothing for charter or training flights. Mr. Lussier stated they did not offer charter flights as it was not revenue-producing. In fairness to everyone, Mr. Girard suggested offering the FBO a trial period of up to one year.

Mr. O'Connor commented in his tenure, Mr. Lussier had been one of the better FBO's and he was hopeful the agreement would be advantageous to all parties involved. He said, in the past, other individuals had become disinterested upon learning of the hangar rental fee.

Mr. Dusek entered the meeting at 10:05 a.m.

John Alexander, a private pilot, indicated that he kept his plane in North Creek but would utilize his plane more often if Warren County had additional hangars. He said upon being informed that the Warren County Airport intended to construct additional hangars, he said he asked to be placed on the list of potential tenants but it still had not come to fruition. Mr. Alexander emphasized the need for t-hangars for a reasonable rental fee based upon what the market would bear. Mr. Tessier apprised the number of interested pilots went from 18 to 7 when they were advised the rental fee would be \$350 per month; however, he said since the County had leased the property to a private individual (Richard Schermerhorn), the cost per month would probably decrease. Based upon personal experience, he said there were pilots that would prefer to have their annuals done here but due to the lack of space, they went elsewhere. Mr. Lussier informed the committee a meeting had been scheduled to determine how to finance these additional t-hangars. Mr. Stevens acknowledged the County had success with this public/private partnership with the FBO and Mr. Schermerhorn, and he would recommend continuing that partnership when it was a revenue-producing facility, especially when the private entity could build it less expensively than government.

Relative to the discussion on annuals, Mr. Girard queried whether they (annuals) covered the cost of the monthly fee. There had been occasions when aircraft owners took their planes elsewhere to be repaired due to the lack of space but with the construction of these additional hangars, Mr. Lussier stated, he expected an increase in maintenance and fuel sales. He said they had well-qualified airline mechanics at the airport; it was just the hangars that were needed.

If Mr. Lussier was comfortable with the \$1,500 monthly fee, Mr. Girard asked if the County could agree to a percentage above that fee so the FBO did not lose. Mr. Lussier replied he was more comfortable with a flat rent and increase it over time. Mr. Tessier apprised the old "shop" would be taken out of the contract with the FBO and upon fixing up that area, the County would receive rental income from that tenant to offset the cost of the new building. Mr. Girard queried if the t-hangars were a separate lease and Mr. Stevens responded Mr. Schermerhorn did not express an interest due to the return he was looking to obtain. The lease with Mr. Schermerhorn gave him the provision to build but it expired in 2008 with no renewal provision, noted Mr. Stevens.

Motion was made by Mr. Girard, seconded by Mr. Stec and carried unanimously authorizing a public hearing be scheduled regarding amending the occupancy lease with the FBO at the Floyd D. Bennett Memorial Airport.

Mr. O'Connor asked Mr. Lussier if he thought about constructing the t-hangars himself and he responded he hoped to commence construction in the spring but he wanted pilots to guarantee their interest (based upon a fair market price) and, therefore, he expected a return of 3% to 5% return on fuel and service. Mr. Lussier indicated he would need to have a Business Plan, as well as developing a long-term land lease (20-30 years).

In fairness to both the public and private sector, Mr. Dusek stated he thought the committee should have the financial dynamics of the profits from both sides but understanding the FBO needed to make a reasonable profit to make it worth his while. In addition, he said he would recommend the committee adopt standards applicable to all airport buildings in terms of color and architecture features. Mr. Dusek stated the Airport Master Plan that was adopted by the full Board should be

their guide.

Continuing on with Item 2 on the agenda, Mr. Stevens advised that Mr. Schermerhorn indicated an interest in building his new hangar to include items necessary for maintenance. He said Mr. Schermerhorn explained his current lease did not permit maintenance but his tenants desired maintenance as well as storage. He said they were experiencing a situation wherein the owner of the aircraft contracted for maintenance and cleaning of the airplane. Mr. Stevens said he reminded Mr. Schermerhorn the lease prohibited maintenance in the hangar and Mr. Schermerhorn was in agreement with resolving the matter so it could be permitted. Pursuant to the Minimum Standards, Mr. Stevens apprised the FAA states an aircraft owner could not be prohibited from performing their own maintenance; however, he said, their definition of "own maintenance" included utilizing their own employees and once the work was contracted out, it became a commercial operation. Mr. Stevens distributed copies of a Permit Agreement that was designed for the Argyle Flying Services (a copy of which is on file with the minutes).

Mr. Stevens said the committee must decide whether the County would like a jet maintenance facility and whether it would conflict with the FBO agreement. He said he understood that Empire East employees were not certified to perform jet maintenance; however, Mr. Lussier disagreed, noting the FAA required that any A&P could perform the certified work on any jet aircraft as long as they had the information and tools to do the repairs. He said he was unsure where the certification was derived. Mr. O'Connor expressed his satisfaction with the work Mr. Schermerhorn had achieved but noted the County must be fair to the FBO. Mr. Tessier queried whether it was limited to the one plane or would other planes be brought in for maintenance and Mr. Stevens answered that was a decision of the committee. Wayne Judge, attorney for Empire East Aviation, asked if Mr. Schermerhorn had violated his lease agreement with the County and Mr. Stevens replied the matter was being investigated but he (Mr. Schermerhorn) had been advised that maintenance was prohibited. Mr. Dusek added he received a letter of concern on behalf of the FBO that the Schermerhorn hangars were being used for maintenance which was not allowed pursuant to the lease. He said he forwarded a copy of Mr. Judge's letter to Mr. Stevens asking him to investigate the claim, as well as a response to Mr. Judge advising him of same. At this point, Mr. Dusek stated, he thought it was premature to say whether Mr. Schermerhorn had violated his lease agreement. Mr. Judge asked if Mr. Schermerhorn was willing to pay the same fees to the County that Empire East Aviation paid and Mr. Stevens replied they had not reached that point of the investigation.

Mr. Tessier stated he thought it was premature to enter into a Permit Agreement until all the facts had been obtained but the question remained, could Mr. Schermerhorn hire a company to perform maintenance on aircraft other than the aircrafts that were stored in there.

Mr. Girard asked about the position of Empire East Aviation and Mr. Lussier replied he thought it was a black eye to the FBO. Based upon his personal observation as well as those of his mechanics, he said there was no doubt in his mind that maintenance was being performed and he now questioned when the hangar became a storage hangar versus a maintenance hangar. He acknowledged managing the property for Mr. Schermerhorn but it was strictly to move aircraft in and out, putting them in the hangar and collecting the fees for overnight stays, etc. Mr. Dusek answered the hangar never changed from a "storage" facility to a maintenance facility. He explained he forwarded to Mr. Judge a copy of the lease that specifically described the facility as

a “storage only” hangar. Mr. Tessier mentioned he did not understand how maintenance could be performed in a hangar built for storage. Mr. O’Connor asked whether Mr. Schermerhorn built the hangar with the intended purpose of doing maintenance work or was it strictly for storage. Mr. Stevens explained it was his understanding he built the hangar for storage but recently he had been heavily recruiting customers that required maintenance as well as storage to get a greater return on his investment. According to Mr. Schermerhorn, Mr. Stevens said, these new customers wished to have the maintenance work done in their own hangar and; therefore, it was his tenants that hired these individuals and not Mr. Schermerhorn. Mr. Judge asked Mr. Stevens if these tenants knew they were not allowed to hire outside companies to perform the maintenance work and he replied these individuals were given a copy of the Minimum Standards Document.

Mr. Dusek explained while he understood the concerns of the FBO, an investigation was being conducted and it was not the position of the County to accuse someone of something without having all the knowledge and facts. Specifically, he noted, with regard to hangar No. 3, Mr. Schermerhorn had requested if maintenance could be performed in that hangar but it was clear the first two hangars were intended for “storage only”. Until the issue was resolved, Mr. Dusek advised the attorney for Mr. Schermerhorn that he did not have permission of the County to utilize hangar No. 3 for maintenance until the Board gave him authority. Mr. Dusek added the committee needed to decide on two issues:

- should the County allow Mr. Schermerhorn to perform maintenance in the future; and
- if maintenance had been performed, was he in violation of the lease.

Mr. Fosbrook said he assumed the owner of the hangar was being driven by the customer. Mr. Lussier responded he had never been approached by the customer (Mr. Schermerhorn’s tenant) so he had no idea what type of maintenance they were looking for but he would certainly like the first option. In addition, Mr. Lussier added, he had a sublease with the restaurant who paid 3% to the County, he was paying 3% to the County and it was unfair for individuals entering the airport premises without paying their share but he also understood these were growing pains due to the increased air traffic. Mr. Fosbrook stated if Mr. Lussier was willing to expand the business to satisfy the need, that made them the FBO of record. Mr. Tessier said he anticipated a future in small aircraft repairs and thought this hangar was capable of handling such repairs.

Mr. Dusek recommended forwarding a letter to Jonathan Lapper, attorney for Mr. Schermerhorn specifically informing him that hangar No. 3 would not be granted maintenance privileges. He said he anticipated within a week or two they would be able to respond to Mr. Judge’s letter.

Relative to Item 3, Other Issues, Mr. Dusek said this involved:

- the employment history of a particular person/persons at the County;
- the employment history of a contractor; as well as
- claims made by a particular entity against the County; and
- attorney/client privilege.

Therefore, he said, he requested an Executive Session to discuss these items.

Motion was made by Mr. Stec, seconded by Mr. Girard and carried unanimously that Executive Session be declared pursuant to Section 105 (d) and (f) of the Public Officers Law.

Executive Session was declared from 11:00 a.m. to 12:00 p.m.

The committee reconvened.

Mr. Tessier, Chairman of the Committee, noted no action was taken pursuant to Executive Session.

There being no further business to come before the committee, on motion by Mr. O'Connor and seconded by Mr. Girard, Mr. Tessier adjourned the meeting was adjourned at 12:01 p.m.

Respectfully submitted,

Debra L. Schreiber
Legislative Office Specialist